Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976
No. 76-524

IN THE MATTER OF THE TRUST KNOWN AS
GREAT NORTHERN IRON ORE PROPERTIES

CHARLES S. ARMS and ELIZABETH P. ARMS,
Petitioners,

vs.

WILLIAM W. WATSON, LOUIS W. HILL, JR.,
HARRY L. HOLTZ, JOSEPH S. MICALLEF,
Trustees of the Great Northern Iron Ore Properties Trust
and BURLINGTON NORTHERN INC.,
Respondents.

RESPONSE OF BURLINGTON NORTHERN INC. TO ARMS PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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TABLE OF CONTENTS

	PAGE
Table of Authorities	ii
Statement of the Case	2
Concerning the Proceedings below and the trust instrument construed	2
The Trust Estate	2
Creation of the Trust	2
Terms of Trust	3
Transfer of the Reversion	4
Scope of the Litigation Below	4
Concerning the Arms Petition	5
Scope of the Hepburn Act	5
The Commodities Clause Is Without Controlling Significance in the Instant Case	7
Conclusion	8
Appendix	A-1
Annex A—The Trust Agreement	A-1
Annex B—Contract of Lake Superior Company, Limited and Great Northern Railway, October 20, 1899	A-11

AUTHORITIES CITED

	PAGE
Federal Statutes:	
Commodities Clause, Hepburn Act, June 29, 1906 c. 3591, §1, 34 Stat. 584, *codified* in 49 U.S.C. §1(8)	5, 6
28 U.S.C. §1257(3)	4
Other Statutes:	
Minnesota Statutes §501.19 (1971)	3
Minnesota Statutes §501.33 (1971)	2
Minnesota Revised Laws of 1905, c. 60, §3256	3
Revised Statutes of the Territory of Minnesota, 1851, c. 74, §18	3
Cases:	
United States v. Delaware & Hudson Co., 213 U.S. 366 (1909)	6
United States v. Elgin, Joliet & Eastern Railway Co., 298 U.S. 492 (1936)	6
United States v. South Buffalo Railway Co., 333 U.S. 771 (1948)	6
Secondary Authority:	
4 A. Scott, The Law of Trusts 3d ed. 1967)	3

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STATEMENT OF THE CASE

Concerning the proceedings below and the trust instrument construed.

The judgment of the Supreme Court of Minnesota here considered was rendered in a special proceeding for the construction of a trust instrument under Minnesota Statutes 501.33 (1971). The instrument construed below was the trust agreement of December 7, 1906 which created and now governs a trust of Minnesota mineral lands known as Great Northern Iron Ore Properties. It is reproduced as *Annex A* of this Response. The proceedings below are summarized in the Court's opinion, printed in Arms Appendix, p. A1 at pp. A2-A4.

The Trust Estate

At December 7, 1906, the properties then to become the trust estate were held by ten proprietary corporations. The stock of these corporations was in turn held by Lake Superior Company, Limited, a Michigan partnership association. All of the assets of this association were held under a contract with Great Northern Railway Company dated October 20, 1899, reproduced as *Annex B* of this Response. Under this contract Lake Superior Company was in effect the trustee of a revocable trust for Great Northern Railway Company.

Creation of the Trust

On December 7, 1906, by direction of Great Northern Railway Company, the trust settlor, Lake Superior Company, Limited, entered into the Trust Agreement. This agreement constitutes the trust instrument. It is also the instrument of assignment by which the trust estate was transferred to the trustees.

Terms of Trust

The trust instrument, by express statement, limits successive equitable estates of term and reversion, consisting of:

—a present term, for certificate holders, measured *pur autre vie* upon the lives of eighteen persons in being at December 7, 1906 plus twenty years in gross, and

—a future interest in the nature of a reversion in the settlor, Lake Superior Company, Limited, its successors and assigns.

The instrument contemplates responsible management and orderly development of the properties during the term. It contemplates that mining proceeds during the term [in the nature of rents and profits of land under Minnesota law] are to be distributed to certificate holders during or in all events at the end of the term. It directs that at the end of the term the trustees are to transfer all remaining properties to the settlor, its successors or assigns. This is an expressly reserved reversion, but under Minnesota law the reversion would exist in any event. The limitation of a trust term without the limitation of a succeeding estate of reversion or remainder gives rise to a resulting trust for the settlor by operation of law. See 4 A. Scott, *The Law of Trusts*, §§430, 430.1, 430.2 (3d ed. 1967). In Minnesota this is prescribed by statute. Rev. Stat. of the Territory of Minn. 1851, c. 74, §18; Minn. Rev. Laws of 1905, c. 60, §3256; Minn. Stat. §501.19 (1971).

Trust Administration since 1906

Since 1906 all of the proprietary corporations have been dissolved and the now remaining mineral properties are directly held by the trustees. The course of operations has been and continues to be such that the trustees have entered into

royalty leases with independent mining corporations which, as lessees, mine, sever and become owners of the ore in consideration of the payment of royalties to the trustees. All property rights of the trustees terminate at the time of severance. The trustees have never engaged in mining operations and have never been shippers of ore.

Transfer of the Reversion

The settlor's reserved reversion in the mineral properties was assigned by Lake Superior Company, Limited to Great Northern Railway Company on February 3, 1913 and is now vested in the Respondent Burlington Northern Inc.

The Scope of the Litigation Below

The Minnesota litigation, so far as here relevant, was solely concerned with a construction of the trust instrument. The litigated issue was the claim of the Arms petitioners, supported by a variety of arguments, that the reversionary interest was unintended and illusory and that the entire interest in the trust properties should be held to have vested in the term tenants [certificate holders]. In effect the Arms petitioners sought to reform the trust instrument under the guise of construction, thereby destroying the reversion and converting the term into a fee simple. Concerning this the Supreme Court of Minnesota said:

> "Express provisions of a trust instrument may be reformed if it clearly appears that the settlor was mistaken as to the provisions contained in the instrument it executed. The evidence does not demonstrate such a mistake * * *."

The Court by its decision and judgment has determined with finality that the trust is operative according to its stated

terms; that it is a term trust for certificate holders, followed by a reversionary interest now vested in Burlington Northern Inc. as successor in interest of Lake Superior Company, Limited and Great Northern Railway Company.

CONCERNING THE ARMS PETITION

The Arms petition states, as basis for jurisdiction under 28 U.S.C. § 1257(3) and as identification of a subject of proposed review that

> "This case turns on the Commodities Clause of the Hepburn Act." (Petition p. 3)

It is necessary to disagree.

The Respondent Burlington Northern Inc. submits that this case presents no substantive question under the Hepburn Act, and in consequence:

(i) there is no jurisdiction for review under 28 U.S.C. § 1257(3); and

(ii) grounds for review are wanting under Rule 19 of this Court.

SCOPE OF THE HEPBURN ACT

The Hepburn Act, an amendment of the Interstate Commerce Act generally known as the Railroad Rate Bill, was enacted on June 29, 1906. It was effective for most purposes on August 28, 1906 (34 Stat. 584), but it was effective on May 1, 1908, in respect of a special section known as the Commodities Clause. This was enacted in the following language:

> "From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or com-

modity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for use in the conduct of its business as a common carrier".

The Commodities Clause as originally enacted is now 49 U.S.C. § 1(8) except that the introductory phrase "From and after May first, nineteen hundred and eight" is omitted.

The policy thus expressed looked to an appropriate separation of the ownership of commodities from their pubic carriage. J. J. Hill said as much (but no more) in the 1912 reminiscences quoted in the Arms Petition. Under the Commodities Clause a rail carrier may not be the public carrier of its own ore. No one appears to contend otherwise.

On the other hand, the Commodities Clause does not prohibit the transportation of commodities by a carrier merely because of antecedent acts of mining, manufacturing or production. There is no unlawful carriage if at the time when transportation occurs the ownership of the commodities has passed to an independent owner-shipper. *United States v. Delaware & Hudson Co.*, 213 U.S. 366 (1909). Even where the carrier and the owner-shipper are related by stock ownership the result is the same, assuming only that one is not the *alter ego* of the other. *United States v. Elgin, Joliet & Eastern Railway Co.*, 298 U.S. 492 (1936); *United States v. South Buffalo Railway Co.* 333 U.S. 771 (1948). There is no authority to the contrary and no indicated reason for the adoption of a different rule. The policy of the statute is satisfied.

THE COMMODITIES CLAUSE IS WITHOUT CONTROLLING SIGNIFICANCE IN THE INSTANT CASE

The trust here under consideration was established well in advance of the effective date of the Commodities Clause; it has continued in operation for seventy years and has a prospective duration now measured by two lives in being plus twenty years. If this Court, on review of the Hepburn Act, were to conclude that when the reversion matures at the end of the term the transportation of ore mined from the reversionary lands will be illegal, the reversioner might at that time be required to desist from illegal transportation of the ore. The reversion would remain undisturbed. No different result would ensue if the present existence of a future interest by way of reversion were held to render present transportation illegal (a preposterous supposition). The reversioner's future interest would not be disturbed.

Whereas the Commodities Clause deals exclusively with transportation, the instant case deals exclusively with the Burlington Northern's reversion in Minnesota mineral lands. The Arms petition, purporting to deal with violations of the Hepburn Act, makes no specification of violation on the part of Burlington Northern Inc. or its predecessors in interest. The record supports no claim of violations, past, present or prospective. None is indicated.

The Hepburn Act has nothing to do with any issue justiciable in this Court under Writ of Certiorari. The Act is not a source of Minnesota real estate titles and it imposes no limitations on the ownership of Minnesota lands. Violation of the

Commodities Clause, of whatever magnitude, gives rise to no private remedy, invokes no private penalty and works no forfeiture or escheat. No possible application of the Act could disturb the property rights adjudicated below.

Even if it were otherwise and even though some overriding public interest urgently suggested a review of the Hepburn Act, the instant case presents no factual basis upon which significant review can be predicated. The Commodities Clause is properly enforced in a suit in federal court by the United States brought by the attorney general of the United States to enjoin an illegal transportation of commodities. This is not such a case, nor is this the proper forum.

CONCLUSION

The Respondent Burlington Northern Inc. submits that the circumstances requisite to sustain jurisdiction under 28 U.S.C. § 1257(3) are absent; that the case presents no question of substance under any federal statute and that no reason exists under Rule 19 for issuance of the Writ.

Respectfully submitted,

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RICHARD E. KYLE
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Attorneys for Respondent
Burlington Northern Inc.

Briggs and Morgan
Of Counsel

APPENDIX

ANNEX A
TRUST AGREEMENT

AGREEMENT, Made this Seventh day of December, A. D. 1906, by and between the LAKE SUPERIOR COMPANY, LIMITED, an association organized under the laws of the State of Michigan, party of the first part, and LOUIS W. HILL, JAMES N. HILL, WALTER J. HILL and EDWARD T. NICHOLS, parties of the second part, Witnesseth:

WHEREAS, The party of the first part has acquired the shares of stock hereinafter described and transferred, and now holds the same for the benefits of the shareholders of The Great Northern Railway Company; and

WHEREAS, By contract between the party of the first part and said railway company, bearing date the 20th day of October, A. D. 1899, the right is reserved to said railway company to authorize or direct, by resolution of its Board of Directors approved by its stockholders, a transfer of said shares of stock by said party of the first part; and

WHEREAS, The said Board of Directors, at a meeting duly held on the 14th day of November, A. D., 1906, did, by resolution, authorize and direct the said party of the first part to enter into this agreement and make the tranfer herein made, upon the terms and conditions herein set forth, which resolution has been approved by the stockholders of said railway company at an adjourned annual meeting held on the 19th day of November, A. D. 1906,

NOW THEREFORE, The party of the first part doth hereby assign, transfer and set over unto the parties of the second part, hereinafter called the "trustees", and to the survivors and survivor of them, and to their successors in the trust herein created, and to their assigns, all and singular the following described personal property, to-wit:

Seven hundred and fifty (750) shares of the par value of One thousand dollars ($1000.00) each of the capital stock of the West Missabe Land Company, Limited; Five thousand eight hundred and seventy-nine (5879) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the North Star Iron Company; One thousand (1000) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the Leonard Iron Mining Company; Five hundred (500) shares of the par value of One Hundred dollars ($100.00) each of the capital stock of the Tyler Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the Harrison Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the Jackson Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the Polk Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the Fillmore Iron Mining Company; Five hundred (500) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the Arthur Iron Mining Company, and Five (5) shares of the par value of One hundred dollars ($100.00) each of the capital stock of the Van Buren Iron Mining Company.

TO HAVE AND TO HOLD all and singular the said shares of stock, and any and all shares of stock or other property for which said shares or any of them may at any time be exchanged, or which may at any time accrue to the shareholders of said companies or any of them, or of the successors of any of them, whether by reason of the dissolution of any such company or for any other cause, with all and singular the rights and powers of shareholders in respect thereof, and full power of sale or other disposition thereof, as hereinafter provided, to said trustees, and the survivors or survivor of them, and their said successors and assigns.

IN TRUST, HOWEVER, to hold, use and dispose of the said property and all income and proceeds thereof, upon the trust herein expressed, for and during the lives of the following named persons and the life of the last survivor of them, and for and during the twenty (20) years next following the death of such last survivor, unless said trust shall be sooner determined, the names and description of said persons upon whose lives the duration of said trust is limited, being:

Louis Hill, James Jerome Hill and Cortlandt Hill, sons of Louis W. Hill, of St. Paul, Minnesota; George Norman Slade, son of George T. Slade, of said St. Paul; Francis John Ward and Lawrence Ward, sons of Frank E. Ward, of said St. Paul; Walter Jerome Hill, son of James J. Hill, of said St. Paul; Thayer B. Farrington and John D. Farrington, sons of Robert I. Farrington, of said St. Paul; Howard Elliott, Jr., son of Howard Elliott, of said St. Paul; Jule M. Hannaford, Jr., and Foster Hannaford, sons of Jule M. Hannaford, of said St. Paul; Payne Whitney, of New York City; George F. Baker, Jr., son of George F. Baker, of New York City; Samuel Thorne, Jr., son of Samuel Thorne, of New York City; Robert L. Bacon, Gaspar C. Bacon and Elliott C. Bacon, sons of Robert Bacon, of Washington, D.C.

1. The trustees hereunder shall, while holding said shares of stock or any of them of any of such corporations, use and exercise their powers as such shareholders to preserve the existence and the organization of such corporation, and to secure at all times proper management of the property and business and affairs of such corporation.

2. Said trustees shall, at all times, while holding said shares or any of them or any property subject to this trust, collect and receive all dividends declared upon such shares, and all other income or profits or other moneys that may accrue to them, or to which they may become entitled as holders of such shares or other property.

3. Said trustees shall, out of the moneys so received by them, or out of the proceeds of any sales made by them of any of said shares, pay all expenses of said trust, including taxes, if any, and the compensation hereinafter provided to themselves as trustees. And in no event shall they have recourse to the certificate holders mentioned for the payment of any part of such expenses or payments or any liability incurred by said trustees.

4. After payment made of or provision made for the expenses of said trust, the said trustees shall, from time to time, and at least once in every year, distribute and pay such portion of the net income or proceeds of the property held by them as such trustees, as they may deem proper to be so distributed, among and to the persons appearing as shareholders of the Great Northern Railway Company, registered as such upon its books at the close of business on the 6th day of December, A.D. 1906, and to their assigns, under and by virtue of assignments made in accordance with the provisions therefore hereinafter contained.

5. The interest of the persons made beneficiaries under said trust shall consist of One million five hundred thousand (1,500,000) equal shares, each original beneficiary being entitled to receive the number of shares, and a certificate therefor, as hereinafter provided, in said trust equal to the number of shares of stock of the Great Northern Railway Company registered at the date last aforesaid in his name as the holder thereof on the books of said company.

A list of said original beneficiaries showing their respective names and addresses, and the number of shares to which each is entitled under said trust, signed by the chairman of the party of the first part and by the parties of the second part hereto, is appended to this instrument.

6. The interest of each and every beneficiary under said trust is and shall continue to be limited to the right to receive his proportional share or dividend in such distributions as shall, from time to time, have been determined on and declared by said trustees as hereinbefore provided.

7. The trustees shall cause to be prepared certificates of beneficial interest under said trust, which shall be identical in form, but may be of several series, according to the respective denominations thereof. The certificates of each series shall bear their proper serial designation and shall be numbered consecutively from one upward. Each certificate shall state the proportional interest or number of shares to which the person named therein is entitled under said trust, and such interest shall be assignable only by the person named therein and registered as holder thereof on the books of the trustees, by transfer in writing in person or by his duly authorized attorney, and upon surrender of the certificates representing such interest.

Such assignment may be of all, or any number less than all, of the shares represented by such certificate, but not of any fraction of a share. Nor shall any fraction of a share be represented by or included in any of said certificates.

8. Upon the issue of any certificate the trustees shall enter the same in a book or books to be kept by them for that purpose, such entry to show the number and date of such certificate, the number of shares represented thereby, the name of the person entitled to said shares, his residence or address as given to them on the issue of such certificate, or from time to time thereafter, and such other matters as the trustees may deem proper.

And no person not so registered shall be deemed a certificate holder or entitled to any beneficial interest under said trust.

And all dividend cheques, reports, notices or other communications sent by mail, postage prepaid, to any registered holder at such registered address, or to an agent or attorney for the purpose by such holder at the address given therefor by such holder, shall be equivalent to a personal delivery to such holder of the matter so sent.

The trustees shall, by writing recorded in the record of their proceedings, appoint a corporation Registrar of Transfers who shall countersign and enter in a register to be kept by it for the purpose each and every certificate issued by the trustees. Such registry shall show the number and date of each certificate, the number of shares represented thereby and the name of the owner, as recorded on the face thereof. When any certificate shall be in any manner canceled the Registrar shall make a detailed entry thereof in said register. No certificate shall be valid unless countersigned by the Registrar.

The trustees may, in their discretion, by writing recorded in the record of their proceedings, appoint a transfer agent or agents, who shall make transfers of certificates, and who

shall keep a record of all certificates issued or canceled through their agency, and shall countersign each and every certificate so issued. No certificate so issued shall be valid unless so countersigned.

The trustees or any of them may, by writing recorded in the record of their proceedings, appoint agents or attorneys who shall sign certificates on his or their behalf and in his or their names as such trustees.

The trustees may, at any time, by writing recorded in the record of their proceedings, remove any such registrar of transfers, transfer agent or other agent or attorney and appoint another in his place.

9. The trustees shall have full power, during the continuance of this trust, to sell at public or private sale, or exchange for other property, or otherwise dispose of all or any part of the shares of stock hereby transferred to them, or any other property that may have become subject to this trust; and to invest the proceeds of any such sale or sales in other property; and in case of such re-investment the property so acquired, as well as all property acquired by the trustees in exchange, or otherwise, for property held by them under this trust, shall be held by the trustees under the same trust and with the same powers and duties in respect thereto as are hereby provided in respect to the property herein described and conveyed.

10. The trustees are hereby empowered to hire such suitable offices and employ such clerks, attorneys, mining engineers and other agents or other persons as they may deem requisite for the proper execution of this trust, and all such expenses and all others incurred by them in the execution of the trust shall be a prior charge thereon to be paid or provided for before divisions of income or other moneys among the certificate holders.

11. The trustees shall keep books of account of their receipts and expenses and business transactions in the execution of such trust, and a record of their own proceedings at their meetings.

They shall make an annual report of their receipts and disbursements, and of the condition of the trust, a copy of which report shall be sent to each certificate holder.

12. Any trustee may at any time resign his trust by writing signed by him and delivered to the remaining trustees or trustee, accompanied by a proper transfer and release of his title to and interest in the trust property. In case of the death or resignation of any trustee the vacancy thereby created shall be filled by the remaining trustees or trustee by resolution and appointment in writing, recorded in the book of record of their proceedings. If at any time there should be but a single trustee remaining, he shall first appoint one trustee, and those two shall appoint a third. If at any time there should be no trustee existing or capable of acting, the Board of Directors of the Great Northern Railway Company, or of such corporation if any as shall then be the successor of that company, may appoint one or more trustees.

When any trustee shall become unable to act by reason of illness, absence, or other cause, the other trustees, after first making a record of such fact in the minutes of their proceedings, shall have and may exercise all the powers herein conferred upon all the trustees.

Any trustee may from time to time, by power of attorney duly executed, delegate his powers for a period not exceeding twelve (12) months at any one time to the other trustees or to either of them, and every such power of attorney shall be recorded in the record of the proceedings of the trustees.

13. The trustees shall organize and choose one of their number president, and in case of vacancy in that office shall

elect one of their number to fill such vacancy. The president shall be the active manager and executive officer in carrying on the business devolving on the trustees. Until the gross income of the trust shall equal Five million dollars ($5,000,000.00) in any one year, he shall receive a compensation of Twenty-five thousand dollars ($25,000.00) per annum. And in each year thereafter he shall receive, in addition to the said sum of Twenty-five thousand dollars ($25,000.00) a sum equal to one per cent of the excess of the gross income of the trust for that year over Five million dollars ($5,000,000.00) until his annual compensation shall reach the sum of Fifty thousand dollars ($50,000.00), at which amount it shall remain without further increase.

The trustees may, from time to time, by writing recorded in the record of their proceedings, designate one of their number to sign dividend cheques and other cheques drawn against the trust funds, and all cheques signed by the trustees so designated shall be of the same validity and effect as if signed by all the trustees.

The compensation of each of the trustees other than the president shall be Ten thousand dollars ($10,000.00) per year.

14. The trustees, for the better accomplishment of the purposes hereof, may, from time to time, adopt rules not inconsistent with the provisions hereof for the management of said trust and the government of their proceedings, and may from time to time modify, amend or abrogate any rule so adopted.

15. The trustees shall be responsible only for wilful breach of trust, and each shall be responsible only for his own acts and defaults, and not for those of any other trustee.

16. The word "trustees", where used in this instrument, shall be deemed to mean those who may at any time be trustees hereunder.

17. Upon the expiration of the twenty (20) years next following the death of the last survivor of the before mentioned persons upon whose lives the said trust is limited, the trustees shall at once proceed to wind up the affairs of said trust. After paying or providing for all expenses or obligations of the trust they shall distribute ratably among the certificate holders all moneys remaining in their hands as such trustees, and shall convey and transfer unto the party of the first part, or its successors, or assigns, all property, save said moneys, held by them under said trust.

And thereupon said trust shall cease.

18. The said parties of the second part hereby accept the transfer made and the trust herein expressed.

IN WITNESS WHEREOF, The party of the first part hath caused these presents to be executed, in duplicate, by its proper officers, in that behalf duly authorized, and the second parties have to each duplicate set their hands and seals the day and year first above written.

LAKE SUPERIOR COMPANY, LIMITED
By JAS. J. HILL, Chairman
Attest: LOUIS W. HILL, Secretary
LOUIS W. HILL
JAS. N. HILL
WALTER J. HILL
EDWARD T. NICHOLS

Executed in presence of:
M. R. BROWN
F. S. DALRYMPLE
(Corporate Seal)
M. R. BROWN
F. S. DALRYMPLE

ANNEX B

CONTRACT OF LAKE SUPERIOR COMPANY, LIMITED AND GREAT NORTHERN RAILWAY, OCTOBER 20, 1899

THIS CONTRACT, Entered into this *20th* day of *October*, 1899, between the GREAT NORTHERN RAILWAY COMPANY, hereinafter called the Northern Company, and the LAKE SUPERIOR COMPANY, LIMITED, hereinafter called the Superior Company, an association organized under the laws of the State of Michigan,

WITNESSETH:

I.

That stocks, bonds and properties have been transferred to the Superior Company, as follows:

[the description is here omitted]

II.

It is agreed by and between the Northern Company and the Superior Company, in consideration of the transfer of said stock, bonds and property, and as a condition thereof:

1. That the Superior Company shall not sell, transfer or assign any of such stocks, bonds or properties, nor any part thereof, without the consent of the Northern Company; and there shall be printed or stamped upon each certificate of said stocks a notice that the same is not assignable or transferable except with the approval of the Great Northern Railway Company endorsed thereon, and signed by its President or other fully authorized officer.

2. The Superior Company shall, out of the income derived from the stocks, bonds and properties so transferred, pay all taxes accruing upon the same, all necessary expenses of administration, operation, maintenance and

repair, and also the cost of acquiring any additional equipment, property or improvements.

3. After paying out of the said income, taxes, expenses of administration, operation, maintenance and repair, and the cost of acquiring additional property, equipment, and improvements, the Superior Company will, when requested by the Northern Company, pay the balance of the total income received by it on account of such stocks, bonds and properties, to the stockholders of the Northern Company as they may appear of record at the date of closing the stock transfer books of that company for some regular dividends, ratably, in proportion to their respective holdings of the Northern Company's stock. But such request for payment shall not be made until the amount of such total net profits, income or receipts shall equal at least one-half of one per cent of the amount of the stock of the Great Northern Company outstanding at the time.

The Board of Directors of the Northern Company may, by resolution approved by its stockholders, direct that such profits, income or dividends received by the Superior Company, instead of being paid out in the form of dividends to the stockholders of the Northern Company shall be used for the purpose of acquiring other property, or for such other uses or purposes and upon such terms and conditions as may be set forth in such resolution. The Superior Company agrees that it will comply with the provisions and requirements of such resolution.

4. The Northern Company may, by resolution adopted by its Board of Directors and approved by stockholders, authorize or direct the Superior Company to lease, sell, transfer or exchange the property and assets of either

or all of said companies or associations, or any part thereof, and the proceeds or receipts derived from such sale, lease or exchange shall be held by it and accounted for or disposed of as required by such resolution.

5. Upon demand of the Northern Company, made by resolution of its Board of Directors, approved by its stockholders, the Superior Company agrees to transfer the stock, bonds and properties held by it hereunder, in whole or in part, to the Northern Company, or to such other body or person as may be designated by such resolution, and that it will comply with the provisions and requirements of such resolution in that regard.

6. Action of the stockholders of the Northern Company authorized or required under the provisions of this contract shall be in the form of resolutions to be adopted at their annual meeting or at an adjournment thereof, or at some other regularly called meeting. At such meeting of the stockholders the votes of a majority of the shares of the stock of the Northern Company present and voting shall be final and conclusive as respects any matter embraced in this contract, and have the same force and effect as though owners of all the stock had been present and by their action concurred therein.

7. Copies of resolutions relating to the matters covered by this contract, adopted by the Board of Directors of the Northern Company, or by its stockholders, certified by the Secretary or Assistant Secretary of the Great Northern Railway Company to be correct, shall be delivered to the Superior Company, and it shall accept such resolution as its authority to act and shall be governed by them as respects matters coming within the provisions of this contract.

IN WITNESS WHEREOF, The parties hereto have caused this instrument to be executed by their duly authorized officers. * * *